

**RESPONSE TO THE OFFICE ACTION****The Rejection of Claims Under 35 USC 103(a) As Obvious over Brunelle in View of Jones**

It is first of interest to compare the actual teachings of Brunelle (e.g., in the Abstract and specification, not merely the claims) to the teachings of Brunelle as asserted in the Office Action (OA) as a starting point for analyzing the deficiencies of the primary reference.

<b>QUOTED TEXT FROM BRUNELLE (Abstract)</b>	<b>QUOTED DESCRIPTION IN OA</b>	<b>COMMENTS</b>
A wagering card game	"...live casino card game..."	<b>Equivalent</b>
Each player makes a bet.	"...a player makes a wager..."	<b>Equivalent</b>
Three cards are dealt face down to each player, to the dealer and to the bonus hand.	A first number of three cards is dealt to a bonus hand position, player, and to a dealer.	<b>Equivalent</b>
The dealer combines his dealt cards with his count limit card and states his total.	The player plays against the dealer hand for rank 56.	<b>Count does not equal rank in card games.</b>
The dealer then turns over each player's cards one at a time, compares each player's hand with the dealer's hand, determines whether the player is a loser or winner.	"After comparison with the dealer hand is resolved,..."	<b>This step is erroneous with respect to the limitations of claim 1 (later discussed) as there is no dealer hand, and</b>
Any player who placed a bonus ante having a total less than or equal to a predetermined bonus count value (for example 9) is eligible for the bonus hand.	"...if the player hand has at least a predetermined 'winning arrangement of cards,' the player attains at least a bonus amount level on the player's placed optional side bet bonus wager..." (emphasis added)	<b>the count of Brunelle is not a 'winning arrangement of cards.' Brunelle does not require a "winning" event to advance, but requires only the bonus ante and a hand count total less than a count of 9 to have the win/loss in a bonus evaluated. A hand count total of less than 9 is not necessarily a winning event.</b>
The dealer turns over the bonus hand cards and announces the bonus hand	No specific comment is made, but it is implied that the bonus hand is revealed.	<b>Equivalent</b>

total.		
The dealer then refers to a bonus payout table and pays according to the payout value which matches with the player hand total and the bonus hand total.	"When the player has a winning arrangement of cards and the bonus hand 26 has at least a winning arrangement of cards, the bonus award paid to the player is enhanced by a predetermined rank being present in the bonus hand..."	<b>The bonus payment is not dependent on winning, but on a count of less than 9, which does not necessarily or automatically win.</b>

As can be seen from this comparison, the reference does not actually teach what the Office Action asserts. As the failures in the actual teachings differ from critical assertions in the rejection, that rejection must fail as an anticipation of the claims. A further comparison of what the reference actually teaches and what is claimed is made below to further show the patentability of the claims.

CLAIM 1	TEACHINGS OF BRUNELLE	COMMENTS
A method of playing a live casino card game with a bonus game component comprising:	A wagering card game	
a player making a wager to play in the live casino card game and placing an optional side bet bonus wager on the bonus game component;	Each player makes a bet.	
a first number of cards are dealt to a bonus hand position; a second number of cards are dealt to the player,	Three cards are dealt face down to each player, to the dealer and to the bonus hand.	
	The dealer combines his dealt cards with his count limit card and states his total.	<b>There is no dealer hand or count total, or count limit card in Applicant's claims.</b>
when the player hand has at least a predetermined winning arrangement of cards, the player attains at least a first bonus amount level on the player's placed optional side bet bonus	The dealer then turns over each player's cards one at a time, compares each player's hand with the dealer's hand, determines whether the player is a loser or winner.	<b>The win/loss event is based solely upon the rank of a hand. All awards and amounts of awards are based on rank. There is no comparison with a non-existent dealer's hand.</b>

wager;		
when the player has a winning arrangement of cards	Any player who placed a bonus ante having a total less than or equal to a predetermined bonus count value (for example 9) is eligible for the bonus hand.	Advancement in potential awards occurs with a winning arrangement of cards, not a count total of cards.
	The dealer turns over the bonus hand cards and announces the bonus hand total.	The bonus hand rank is displayed. There is no count involved.
and the first number of cards has at least a winning arrangement of cards, enhancing the first bonus amount level attained by the player.	The dealer then refers to a bonus payout table and pays according to the payout value which matches with the player hand total and the bonus hand total.	There are no winning arrangements of cards, but only a count required by Brunelle. The player hand does not need to win to advance to a bonus consideration, but only need have a count less than 9.

As can be seen, there is a failure in the disclosure of Brunelle to teach the limitations of the claim 1 as originally filed.

With respect to the issue of whether count equals rank, it is of note that Brunelle specifically states:

"The dealer then turns over each player's three cards, one at a time and determines winning hands, block 56. A winning hand is defined as any hand which has a total count value which is less than the total count value of the dealer's hand. At this time, the dealer resolves all table bets according to a regular pay-out schedule, on an even money (1-to-1) basis for all winning hands (except for a hand of three aces which pays 30-to-1). Players whose total is greater than that of the dealer will lose their bets and players whose total is equal to the dealer's total will 'push.'"

This is clearly not a teaching of rank. Brunelle teaches a game where only count is considered. Even where the best hand is three Aces, the hand is best because those cards have a count of 3. It is absolutely clear that Brunelle does not anticipate claim 1. To that end, Brunelle cannot anticipate claims 2, 4-5, 7-8 and 16-19 which are dependent from claim 1.

With respect to claims 9-12, with claim 9 being the independent claim in this group, claim 9 recites:

"A method of playing a casino table **poker-type** card game wherein a bonus hand, a dealer's hand and a player's hand are dealt,

wherein the player plays against the dealer's hand for rank and the player may have a bonus award to be paid on the player's hand enhanced by a predetermined rank being present in the bonus hand." Brunelle does not teach "poker-type card games." Brunelle teaches only a count game (similar to blackjack or baccarat), and therefore claims 9-12 cannot be anticipated. There is no discussion of rank. Three Aces is a good hand in Brunelle because it has the lowest count of 3, not because it has a poker rank of three-of-a-kind.

The addition of Jones does not correct these deficiencies, and there is also no motivation to combine Jones with Brunelle in a complicated manner in an attempt to assert that limitations are obvious, when the combination of references is not motivated by their individual and collective teachings. Even if each of the limitations were present, **which they are not**, the rejection must fail because of the lack of direction, motivation and reason in attempting to combine the references in the manner proposed by the Office Action.

As noted, Brunelle fails to teach the actual limitations taught by claims 1 and 9. The dramatic differences between claim 1 and the failure of the teachings of claim 1 is so great that, even with every teaching of Jones (041) asserted in the Office Action to be assumed, *arguendo*, to be accurate, the rejection would still fail. Jones (041) cannot overcome the deficiencies of Brunelle with respect to the recitations of claims 1 (and all dependent claims) as noted above.

With respect to the teachings of Jones (041), at least that reference does at least add one teaching of merit, and that is the use of poker-type games in casino table wagering environments. However, even the potential "**combination**" of Brunelle and Jones (041) cannot be done with any reasoned motivation from the two references, nor can the references be easily combined to show obviousness in the limitations of claim 9.

Jones (041), as with Brunelle teaches that the bonus bet award is based solely on the existence of the bonus bet (all hands are considered when there is a bonus bet). In Brunelle, the bonus award is based solely on the required maximum count of the player hand (9 or less) plus the combined count of the player hand and the bonus hand. This is totally outside the realm of any interpretation of the limitations in claim 9.

In Jones (041), the player does not have to win (which with a "bonus award to be paid on the player's hand" as recited in claim 9, a winning hand must first be achieved for there to be an enhancement by a bonus schedule based upon the bonus hand) for the independent bonus to be awarded. In Jones (041), the bonus award is paid independently

of any winning or losing event between the player hand and the dealer hand. For example, in Jones (041), the player may have a hand rank of four-of-a-kind, lose to a dealer's straight flush, and then receive a bonus award based on the four-of-a-kind, even though the player lost the underlying game.

In claim 9, it is required that "...a bonus award [is] to be paid on the player's hand [and is to be] enhanced by a predetermined rank being present in the bonus hand ..." This limitation is absent from the teachings of both Brunelle (where a hand count of 9 or less is required for bonus consideration, and that may or may not be a winning hand, and may or may not have any award, much less a bonus award, which is paid for only Three Aces) and Jones (041), where the only bonus consideration qualifying event is a bonus wager and a bonus rank. The bonus award on the bonus bet is independent of any initial payment made on a poker hand to a player based on rank or winning against a dealer hand.

With respect to the combination of Brunelle in view of Jones (041), claims 3, 6-8 and 13-15 are not obvious over any combination motivated by the references.

The rejection is in error and must be withdrawn.

#### Claim 20

This claim is additionally patentable over Brunelle and Brunelle in view of Jones (041) by specifically limiting play to two hands (as between each player and the house, with only a player hand and bonus hand). This excludes the player versus dealer competition in both Brunelle and Jones (041).

**CONCLUSION**

All rejections have been shown to be in error. All claims should be allowed. If the Examiner believes that any remaining issues may be resolved by a telephone call with the attorney of record, he is courteously invited to call the attorney below at 952.832.9090 Central Standard time zone.

Respectfully submitted,


ROGER M. SNOW

By His Representatives,

MARK A. LITMAN & ASSOCIATES, P.A.  
York Business Center, Suite 205  
3209 West 76<sup>th</sup> Street  
Edina, Minnesota 55435  
(952) 832-9090

Date: 1 August 2005

By: \_\_\_\_\_

  
Mark A. Litman  
Reg. No. 26,390